



COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
PO Box 1199
RICHMOND, VA 23218-1199

Notice of Contract Renewal (Price Decrease change in red)

CONTRACT # E194-1277

Contract Title: Heating & Oil Emergency Generator Fuel

1	DATE:	July 23, 2013
2	CONTRACT PERIOD:	August 1, 2013 through July 31, 2015
3	SUPERCEDES:	E194-207-10
4	AUTHORIZED USERS:	State Agencies, Institution of Higher Educations, Public Bodies, Community Service Boards and other entities authorized by the Code of Virginia.
5	CONTRACTOR'S eVA VENDOR ID#:	E67042
6	CONTRACTOR / VENDOR	James River Solutions, Inc.
7	CONTRACTOR CONTACT	Name: Tracy Little Phone: (804) 3598-9000 Fax: (804) 955-1142 Email: tracy@jrpetro.com
8	TERMS	NET 30 DAYS
9	DELIVERY	4 Days ARO
10	F.O.B.	Destination
11	CONTRACT PRICES	See Pricing Schedule
12	DPS CONTRACT OFFICER	Name: Sandra D. White Phone: (804) 786-0078 Email: sandra.white@dgs.virginia.gov Fax: (804) 786-5413

ADDITIONAL COPIES OF CONTRACTS AND ANY ASSOCIATED CONTRACT CHANGES ARE AVAILABLE ON THE DPS WEBSITE: www.eva.virginia.gov under the State Contracts webpage

NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343, or against a bidder or offeror because of race, religion, color, sex national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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1. CONTRACTOR / VENDOR INFORMATION

Contractor Name	eVA Vendor ID#	Location Address(es)	Contact Information (Name, Phone, Fax and Email)
James River Solutions, Inc.	E267042	10487 Lakeridge Parkway Ashland, Virginia 23005	Name: Tracy Little Phone: (804) 358-9000 Fax: (804) 955-1142 Email: tracy@jrpetro.com

2. GENERAL INSTRUCTIONS

1. **Ordering Method:** Unless otherwise instructed or exempted by DPS, all departments, institutions and agencies of the Commonwealth of Virginia using this contract must order items by issuing purchase orders through eVA. The orders will be governed by this agreement and the terms and conditions contained in the separate agreement for participation in eVA executed by the contractor. If this contract is authorized for use by localities, Virginia cities, counties, town and political subdivisions, they should place all purchase orders through eVA or eVA Lite.
 2. **Purchase Order Information:** When placing an eVA non-catalog order, each line of the requisition must be identified with the correct Contractor Name and Location (eVA Vendor ID#), contract item number, full item description and the contract unit price. The exact Contract Number, as shown on page 1, **must** be inserted in the Contract Number field for each line item of the eVA requisition. Purchase orders not bearing the correct contract number in the appropriate location will be non-compliant and may not be considered a purchase against this contract.
 3. **Ordering Entity Acceptance:** Inspection and acceptance upon delivery and approval of vendor's invoice is the responsibility of the receiving entity.
 4. **Complaints:** Any complaint that is due to a violation or breach of the Contract provisions, shall be reported on an official DPS "PROCUREMENT COMPLAINT FORM" (Form # DGS-41-024). To facilitate notification, this form shall be completed by the ordering entity and sent to the contract vendor, with a copy sent to DPS to the address shown on the form. Contract vendors shall also use this form to initiate complaints concerning entities. This form may be downloaded from the internet at the following link <http://eva.virginia.gov/learn-about-eva/files/VendorComplaintForm.doc>
 5. **Changes:** Any changes whether for increases or decreases in pricing, delivery terms or additional options must be approved by the Division of Purchases and Supply in advance of issuance of the purchase order. Disputes between the ordering agency and the vendor will be resolved in accordance with the terms of the contract and any change orders/renewals unless prior approval was granted by DPS.
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3. ADDITIONAL INFORMATION

1. **PRICES:** Prices shall be firm for a period of two years. Thereafter, prices may be adjusted in accordance with the Price Escalation/De-escalation clause.
2. **PRICE VERIFICATION:** Upon request by the ordering entity, the Contractor shall supply a weekly statement to that entity that indicates the price of fuel of each day of that week. This statement is necessary to verify the prices for payment. Failure to adhere to this requirement may result in the cancellation of the contract.
3. **ORDERING INSTRUCTIONS:**
 - a. Please contact your James River at the number listed under vendor information.
 - b. Provide your name, address, and telephone number of the person in your agency to contact for delivery information.
 - c. The name, address, and telephone number of the individual in your agency who will be responsible for the initial approval and processing of the invoice payment and who should receive information concerning changes in base price.
 - d. You can place orders by phone or email. See the DPS Protocol sheet for additional information.
4. **MINIMUM ORDERS:**
 - a. Any State Agency/Public Body whose annual usage of oil/heating does not exceed 200 gallons may opt out of using this contract. Please contact DPS contract officer for a waiver.
 - b. There will be an additional charge of \$150.00 for amounts less than 200 gallons delivered to one (1) site/location.
 - c. If multiple tanks at one site/location receive 200 gallons or more the additional fee does not apply.
5. **RATE OF DELIVERY:**
 - a. Delivery shall begin August 1, 2013 and continue as ordered throughout the contract period.
 - b. Unless otherwise directed by the using agency/institution, the Contractor shall service all tanks on an automatic basis and re-supply such fuels when the tank level reaches approximately one-fourth (1/4) capacity.

6. **TRANSPORT DELIVERIES:**

- a. Contractor delivering to large tanks which can accommodate transport deliveries and do not require metering may be required by the using agency to deliver in trailers that have been sealed at the loading rack.
- b. Agencies may require inspection of these seals by their personnel prior to filling tanks.

7. **TANKWAGON DELIVERIES:** Pumping and metering (including metered delivery tickets) are required for all tank wagon deliveries.

8. **RENEWAL**

- a. There are three (3) years with two (2) year options left to renew on this contract agreement.
- b. The decision as to whether to exercise the next renewal option will be made by the contract officer approximately four to six months in advance of the expiration date of the current term.

4. SCOPE OF WORK / GENERAL & TECHNICAL SPECIFICATIONS

1. **SCOPE OF WORK:** The contract is mandatory-use for State Agencies in regards to heating fuel oil and emergency generator diesel fuel services, unless otherwise directed by the Department of General Services (DGS), Division of Purchases and Supply (DPS). The contract will be optional-use for all other authorized users, unless it is deemed to be a mandatory source by their respective controlling legal authority, in coordination with the Department of General Services (DGS), Division of Purchases and Supply (DPS).
2. **GENERAL REQUIREMENTS:** Fuel oil supplied under this contract shall conform to American Society for Testing and Materials (ASTM) D396 as adjusted to industry standards in effect in this area for the grades of oil supplied. Fuel oil shall be free of grit, acid, water, and fibrous or other foreign materials or natural substances likely to clog or injure burners and valves.
3. **FUEL OIL # 2:** Fuel oil supplied under this contract shall conform to American Society for Testing and Materials (ASTM) D396 as adjusted to industry standards in effect in this area for the grades of oil supplied. Fuel oil shall be free of grit, acid, water, and fibrous or other foreign materials or natural substances likely to clog or injure burners and valves
4. **PREHEATED FUEL OILS:** All preheated fuel oils shall be reduced to volume for billing purposes in accordance with Table #7 "Reduction of Volume to 60 degrees. As published by the American Society for Testing Materials. No price adjustment for temperature will be allowed for fuel oil.

5. **CONDITIONS OF DELIVERY:**

- a. All deliveries must be made between 7:30 A.M. and 5:00 P.M.
- b. Provide a system from the fueling process through the invoicing process that includes:
 1. The name of the fuel supplier;
 2. The date on which each fuel shipment is delivered;
 3. The volume of each fuel delivered in the shipment;
 4. A statement that the fuels received with the ASTM specifications for fuel oil, and diesel to be used in emergency generators.
 5. The sulfur content of each shipment of fuel (if applicable to fuel type ordered).
Note: Sulfur content must meet DEQ requirements for the region in which it is delivered.
- c. Provide pump accuracy meeting the standards of the Virginia Department of Weights and Measures.
- d. Provide fueling history that is maintained by date and time for a minimum of three years plus current year and seven years at the maximum.

- e. Provide your plan to handle emergency delivery requirements to include logistics, response time and cost implications.
- f. Provide quarterly reports to meet the DEQ requirements
- g. Arrange for emergency deliveries, including logistics and pricing, should be made.

6. FUEL OIL-BURNING FACILITIES:

- a. The Commonwealth has an estimated of 76 agencies, many with multiple locations that purchases fuel oil. This represents an approximate total load of 3.5 million gallon annually.
- b. Most of the Commonwealth's fuel oil consumption reflects fuel oil #2.
- c. Some facilities may require #4, #6 or Bio-diesel fuel oil.
- d. The Commonwealth's facilities all currently receive delivery via fuel oil trucks and have varied levels of site storage. See Attachment 6.

7. CERTIFICATION REQUIREMENTS:

The Contractor shall submit the following certification as to source and base price with each invoice submitted to the ordering agency for all grades of fuel oil deliveries, (Nos. 2, 4, and 6). The format of this certification shall be as follows:

CERTIFICATION OF PRODUCT DELIVERED

Deliver Date: _____

Source indicated on Bid: _____

Base Price from source on above date: _____

Base price including any discounts offered on fuel oil bid: _____

Differential: _____

Total Price per Gallon: _____

% Sulfur _____%

I/We certify the above is correct.

Signed: _____

8. **CONSIGNMENT FUEL ORDERS AND DELIVERY:**

- a. The placement of orders through the eVA procurement system will be mandatory for state agencies and institutions of higher education, and optional for local public bodies, but use of eVA in the placement of orders by local public bodies is highly encouraged.
- b. Orders may be placed by telephone by the ordering agency and then followed up with a confirming order placed through eVA or other system appropriate for localities.
- c. All orders placed under the contract are to be fulfilled within forty-eight (48) hours, unless delayed delivery is requested. Contractor will verify the ordering facilities normal operating hours prior to filling orders.
- d. Deliveries will only be accepted during normal operating hours, except for emergencies or other arrangements made with the ordering agency.
- e. Oil/heating fuel oil prices will be based on the Oil Price Information Service (OPIS) daily gross closing average price for the agreed upon rack location for the day the fuel is pumped from the tank. Note: After receipt of proposals, the initial price evaluation will be conducted using differential based on the OPIS index. During negotiation, the Commonwealth reserves the right to consider pricing based on other indexes.

9. **SPECIAL NEEDS:** Contract language addressing fuel spills and the cost/responsibility for clean-up, including any requirements, fines or fees assessed by the Department of environmental Quality, Environmental Protection Agency, or other regulatory departments, agencies, etc. This would include spills that occur during delivery.

5. COMMODITY INFORMATION & PRICING

James River Solutions proposes the following for pricing of heating oil, dyed diesel, kerosene, bio diesel, #6 and #4 fuel oils.

Variable Pricing

1. Daily OPIS pricing (closest terminal with available product) plus **.12/gallon** for “tankwagon” deliveries.
2. Bio Diesel will be based off of Richmond Terminals for all locations since this is the only terminal that reports bio diesel at this time. If “other” terminals report to OPIS in the future we will apply closest terminal pricing and notify the Commonwealth.
3. Daily OPIS pricing (closest terminal with available product) plus **.015/gallon** plus freight for “transport” deliveries.
4. Bio Diesel will be based off of Richmond Terminals for all locations since this is the only terminal that reports bio diesel at this time. If “other” terminals report to OPIS in the future we will apply closest terminal pricing and notify the Commonwealth.

Fixed Pricing

This pricing option is the agency’s choice as follows for periods of 3 month, 6 month and 12 month. James River will work with each agency based on product, volume and preferred period of time they are interested in “locking in”.

1. Tankwagon deliveries will by NYMEX pricing for indicated period of time (example - 6 month) plus freight and a **.12** fixed differential
2. Transport deliveries will be NYMEX pricing for indicated period of time plus freight and a **.015** fixed differential.

Additional fees:

1. Federal L.U.S.T fee = .001 per gallon
2. Federal Oil Spillage Fee = .0019 per gallon
3. Virginia Tank Storage Fee = .006 per gallon
4. SMARTank installation and monitoring - .005/gallon additional with James River Solutions installing the device per request from the agency.

6. GENERAL TERMS AND CONDITIONS

A. VENDORS MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the "Vendor" tab.

B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. ANTI-DISCRIMINATION: By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E). In every contract over \$10,000 the provisions in 1. and 2. below apply: 1. During the performance of this contract, the contractor agrees as follows: a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer. c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements. 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. ETHICS IN PUBLIC CONTRACTING: By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the

performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. DEBARMENT STATUS: By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFB's: Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

I. CLARIFICATION OF TERMS: If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

K. PRECEDENCE OF TERMS PRECEDENCE OF TERMS: The following General Terms and Conditions VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. QUALIFICATIONS OF BIDDERS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract. 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the

contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods: a. By mutual agreement between the parties in writing; or b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. TAXES: Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

R. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offers) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offers) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

S. TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/offers) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping

containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

T. INSURANCE: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:
1) Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract. 2). Employer's Liability - \$100,000. 3) Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy 4). Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.).

NOTE: In addition, various Professional Liability/Errors and Omissions coverage are required when soliciting those services as follows: Profession/Service /Limits, Accounting /\$1,000,000 per occurrence, \$3,000,000 aggregate Architecture/\$2,000,000 per occurrence, \$6,000,000 aggregate, Asbestos Design, Inspection or Abatement Contractors/ \$1,000,000 per occurrence, \$3,000,000 aggregate, Health Care Practitioner (to include Dentists, Licensed Dental, Hygienists, Optometrists, Registered or Licensed, Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.) \$1,750,000 per occurrence, \$3,000,000 aggregate, (Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2005 - \$1,800,000, July 1, 2006 - \$1,850,000, July 1, 2007 - \$1,925,000, July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the Code of Virginia. Insurance/Risk Management /\$1,000,000 per occurrence, \$3,000,000 aggregate, Landscape/Architecture/\$1,000,000 per occurrence, \$1,000,000 aggregate, Legal/\$1,000,000 per occurrence, \$5,000,000 aggregate. Professional Engineer/\$2,000,000 per occurrence, \$6,000,000 aggregate, Surveying/\$1,000,000 per occurrence, \$1,000,000 aggregate

U. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA website (www.eva.virginia.gov) for a minimum of 10 days.

V. DRUG-FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. NONDISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

- a. eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

- a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- c. For orders issued July 1, 2011 thru June 30, 2013, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.
- d. For orders issued July 1, 2013 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

Y. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Z. SET ASIDES: This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.

J. PAYMENT: To Prime Contractor: a.) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations). b.) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however. c.) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed. d.) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act. e.) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed.

In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363). 2. To Subcontractors: a.) A contractor awarded a contract under this solicitation is hereby obligated: (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason. b.) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth. 3.) Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding

such payment. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

AA. BID PRICE CURRENCY: Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. 34 NOTE: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia 2.2-4343 or against a bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

7. SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the Virginia Department of State Police will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that Virginia Department of State Police has purchased or uses any of its products or services, and the contractor shall not include the Virginia Department of State Police in any client list in advertising and promotional materials.
- B. **AUDIT**: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD**: The Commonwealth will make the award on a grand total basis to the lowest responsive and responsible bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
- D. **CANCELLATION OF CONTRACT**: The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- E. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
- F. **PRICE ESCALATION/DE-ESCALATION**: Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: Producer Prices Indexes (Service,). No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are

subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers.

The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

- G. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for three (3) years with two-year renewal options under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the Producer Prices Indexes (Service.) of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the Producer Prices Indexes (Service.) of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- H. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

- I. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The solicitation/contract will result in (_____) purchase order(s) with the eVA transaction fee specified below assessed for each order.

a. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.

- b. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.
- c. For orders issued July 1, 2011 thru June 30, 2013, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 0.75%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 0.75%, Capped at \$1,500 per order.
- d. For orders issued July 1, 2013, and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

The eVA Internet electronic procurement solution, website portal www.eva.virginia.gov , streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

- J. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- K. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to

include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

- L. **BIODIESEL FUEL.** Beginning on July 1, 2010, agencies and institutions other than public safety agencies shall procure only diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in §45.1-394 of the Code of Virginia. This requirement shall only apply to procurements of diesel fuel for use in on-road internal combustion engines and #2 fuel burned in a boiler, furnace, or stove for heating, and shall not apply if the cost of such procurement exceeds the cost of unblended diesel fuel by 5 percent or more. (Executive Order 82, dated June 10, 2009).
- M. **CONTINUITY OF SERVICES:** Contractor recognizes that Services provided under this Contract are vital to the Commonwealth and any Authorized User, and that Services must be continued without interruption, and that upon expiration or termination, a successor, either the Commonwealth or another contractor, must continue the Services provided herein. Therefore, Contractor hereby agrees:
- a. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
 - b. To make all Commonwealth-owned facilities, equipment, and data available to any successor at an appropriate time to be determined in cooperation with the DGS Contracting Officer, and prior to the expiration or termination of the contract to facilitate transition to any successor; and
 - c. That the DGS Contracting Officer shall have final authority to resolve any disputes related to the transition of the contract from the Contractor to any successor.

Contractor shall, upon written notice from the Contract Officer, furnish a phase-in/phase-out services for up to ninety (90) days after this Contract expires or is terminated, and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.

Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration or termination that results from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this Contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

- N. **CONTRACTUAL DISPUTES:** In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of General Services, its officers, agents and employees, including, without limitation, the Contracting Officer, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

- O. **INVOICING:** Contractor shall remit each invoice directly to the ordering Authorized User. Contractor shall issue invoices, identifying at a minimum, the components listed below.

- a. product description
- b. price per unit,
- c. quantities,
- d. extended price,
- e. date ordered,
- f. date delivered
- g. purchase order number
- h. ordering entity name, address and contact person.

- P. **CONTRACTOR ACCESS TO COMMONWEALTH LOCATIONS:** The Commonwealth shall grant to Contractor personnel such access to the Commonwealth locations as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The

Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth, or the Authorized User submitting an Order under this Agreement, would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

- Q. **FUEL SITES/ADDITIONAL GOODS AND SERVICES:** The Commonwealth reserves the right to increase and / or decrease the number of sites to which fuel is provided, and to add and delete fuel-related goods and services, during the term of the contract
- R. **REPLACEMENT OF FUEL:** In the event the contractor fails to deliver fuel meeting or exceeding specifications, the receiving authorized user location may direct the contractor to remove such fuel and replace it at no additional cost to the requesting location. If the contractor is unable to deliver fuel meeting or exceeding these specifications within the time period specified for delivery, the requesting location may purchase the material elsewhere and the increased cost, if any, will be paid by the contractor
- S. **DAMAGES/INJURY TO OWNER'S PROPERTY:** When entering any delivery site to make deliveries or perform work, the contractor will be liable for any damages to owner's property at the delivery site or injury to personnel caused by the negligence of its employees, agents, or subcontractors.
- T. **REGULATIONS:** The contractor shall be responsible for complying with all federal, state, and local environmental and other regulations relating to transportation, handling, storage, spillage and any other aspect of providing the fuel and services, as applicable. The contractor shall be responsible for prompt and thorough clean up of all spillage, per EPA specifications.
- U. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

V. Mandatory Acceptance of Small Purchase Charge Card:

Purchasing charge cards offer State agencies and Institutions the opportunity to streamline their procedures for procuring and paying for small dollar goods and services. Vendors responding to this solicitation should note that acceptance of payment by purchase card is mandatory (unless waived by DPS) within 90 days of contract award. For current contracts where acceptance of the purchasing card is not in effect, Contractors must (unless waived by DPS) accept purchase card payments within 90 days of contract renewal. Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. This can be accomplished by vendors establishing their card account at Level 2, which is mandatory or Level 3, which is optional. Information on the various levels for the Bank of America (BOA) Visa Purchasing Card is indicated below.

Charge Card Levels:

The amount of data passed for each charge card payment depends on the level at which the charge card is established. The levels are delineated below and the preferred level by the Commonwealth is level 2.

Level 1 vendors provide basic credit card purchase information, including but not limited to the data listed below. By passing “Basic Data”, the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

Level 2 vendors provide additional information to the Level 1 elements, including, but not limited to the data listed below. By passing level 2 detail, the vendor will receive lower interchange costs. Level 2 is mandatory for any vendors who do business with the Commonwealth of Virginia and accept Bank of America (BOA) Visa Purchasing Card.

- Customer Code (PCO Number from eVA)
- Vendor Tax ID

Level 3 vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including, but not limited to the data listed below. By passing Level 3 (which is optional) data which is considered Superior data, the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount